

REMARKS

The issues outstanding in the final rejection mailed September 5, 2008, is solely the rejection under 35 U.S.C. 103 of all pending claims. Reconsideration of this issue, in view of the following discussion, is respectfully requested.

Claims 1, 4, 7-11, 13-16 and 18 have been rejected under 35 U.S.C. 103 over Findley (CA '603) taken with commonly assigned Hilder (US '102). Reconsideration of this rejection is respectfully requested.

As will be recalled, Findley discloses prior art granules containing pigment, said granules having a size of 10 to 50 microns, and further discloses considerably larger granules in accordance with their invention. The prior art granules are disclosed in Findley as containing carriers which are thermoplastics, see page 1, lines 14-17, while the carriers of the pigments of Findley's invention, on the other hand, all contain stearamide wax, and optionally other ingredients such as EVA copolymers. See page 8, lines 27-30 and examples 2, 3 and 5, for example. The pigments disclosed in Findley are generically said to be "organic" or "inorganic" pigments. See, for example, page 2, lines 24-27 and lines 30-32. As admitted in the current and prior Office Actions, Findley does not disclose flake-form effect pigments, e.g., pearlescent pigments, metal effect pigments, etc. as in the claims. However, the Office Action argues again that it would be obvious to use the high aspect ratio pigments such as pearl luster pigments as disclosed in Hilder, in the compositions of Findley. Applicants respectfully again disagree.

At column 1, lines 27 through end of Hilder, difficulties in processing pearlescent pigments are noted. In particular, Hilder teaches that the pigments cause clogging ("hopper bridging") and flow issues because the flake-type pigments tend to compact when processed. Hilder provides a solution to this problem, by coating such pigments with polar waxes or *non-polar* copolymers, such as polyethylene or polypropylene (see column 2, lines 25-27). Without such coating, one of ordinary skill would be dissuaded from using high-aspect pigments in the primary reference process, for fear of clogging. Thus, what is argued to be obvious in the Office Action is necessarily the use of Hilder's flake-form pigments, coated with polar wax or *non-polar* copolymer, in the process of Findley in which such pigments would be combined with a

carrier which is a stearamide wax *and* Findley's optional polar comonomer, e.g., EVA. The presence of the polar comonomer would be *necessary* in order for the present claims to read on the combination. Thus, what is not addressed in this rejection, yet which would dissuade one of ordinary skill in the art from making such combination, is the uncertainty of the effect on the necessary polar wax and *non-polar* comonomer coating of the pigments of Hilder in the presence of the polar copolymer of Findley. Would such a copolymer dissolve the coating on the Hilder pigments, resulting in them being unprocessable? It is again maintained that one of ordinary skill in the art simply does not have the necessary reasonable expectation of success required to support an obviousness rejection. See, for example, *In re Laskowski*, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989).

However, the present Office Action argues that it fails to see a difference in the function of the polar wax of Hilder and the polar EVA of Findley. These are not, however, the only components which would be present in the combination alleged to be obvious in the Office Action. Hilder's teaching carries with it non-polar copolymers, while Findley requires stearamide wax and polar comonomers. The effect of such combination is simply not known.

In any event, in order to expedite prosecution, claims 1, 8 and 9 have been combined, specifying not only the type of flake pigment employed but the particular nature of the present partially polar comonomer. Moreover, the claim language has been amended in order to use "consisting of" terminology so as to exclude the stearamide wax of Findley. As a result, it is respectfully submitted that one of ordinary skill in the art would not have found the present claims to be suggested by even the combination of the references, and accordingly it is further submitted that the rejection should be withdrawn.

The claims of the application are submitted to be in condition for allowance. However, should the Examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,
/Harry B. Shubin/

Harry B. Shubin, Reg. No. 32,004
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

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